

CHRISTOPHER J. LaBIANCA, Appellant)	
)	
and)	
)	Docket No. 04-1614
)	Issued: December 20, 2004
DEPARTMENT OF HOMELAND SECURITY,)	
U.S. BORDER PATROL, El Centro, CA,)	
Employer)	
)	

Case Submitted on the Record

On June 21, 1991 appellant, then a 40-year-old border patrol agent, filed a traumatic injury claim (Form CA-1) alleging that on that date he slipped on a wooden plank and sustained

injuries in the performance of duty.¹ The Office accepted his claim for right shoulder and left knee strains and paid appropriate compensation and benefits.²

In a January 16, 1992 report, Dr. Veerinder S. Anand, a Board-certified orthopedic surgeon, opined that appellant was permanent and stationary, no longer needed follow-up care and released him from treatment. He released appellant to perform modified duty.

The record reflects that the employing establishment indicated that appellant was terminated from his federal employment on January 9, 1992 due to criminal misconduct and not due to any inability to complete the physical requirements of his position.

In a May 18, 1992 report, Dr. Anand advised that appellant indicated that on February 7, 1992 he was doing his usual and customary work when he came down some stairs and slipped striking the lateral aspect of the left knee. He diagnosed left knee internal derangement with aggravation of his symptoms and indicated that he could see no evidence of thigh or calf atrophy. The physician also indicated that appellant was medically stable and could participate in vocational rehabilitation. In reports dated June 11, 1992, Dr. Anand opined that appellant was to remain on modified work; however, he indicated that he was permanent and stationary and released him from care.

By letter dated June 18, 1992, the Office advised appellant that he was working in a nonfederal position on February 7, 1992 and that his claim for federal benefits would not be considered.

In a November 9, 1992 report, Dr. Anand again released appellant from his care.³

On June 20, July 21 and November 21, 2003, the Office received several undated letters from appellant inquiring into additional benefits.

By letter dated November 28, 2003, the Office advised appellant that if he was claiming a recurrence of disability he would need to file a Form CA-2a (notice of recurrence) and submit evidence regarding a change in his light-duty assignment or a worsening of his employment-related condition.

On December 16, 2003 appellant filed a notice of recurrence of disability in which he alleged a recurrence of his left knee and right knee injuries on November 10, 2001 for which he stopped work on January 24, 2002. He claimed wage loss from January 27, 2002 to December 17, 2003. Appellant alleged that his left leg gave way without warning while walking

¹ The record reflects that the Office had also accepted a right knee strain for a work-related injury occurring on July 14, 1985 claim No. 16-0099490. Appellant received a schedule award of 14 percent to the right leg. The Office has indicated that the 1985 claim is closed.

² Including a left knee surgery on September 4, 1991.

³ The record reflects that appellant received a schedule award for a 13 percent impairment to the left leg on November 9, 1992.

down a flight of stairs in a warehouse, while performing his duties in a private industry position. He was placed on permanent light duty after returning to work from the original injury. Appellant submitted an undated statement alleging that he favored his right knee, which had also been injured on July 14, 1985.⁴ He explained that because he favored his right knee, it began to lose stability and would give way. Appellant also included a work history outlining his private sector positions from September 20, 1992 to January 24, 2002.

In a December 11, 2003 treatment note, Dr. Anand indicated that appellant's condition of left knee internal derangement had not improved. He related that appellant was a border patrol agent for 21 years when he chose to leave following an injury to his left knee due to no longer being qualified and being placed on light duty. Dr. Anand advised that appellant subsequently performed several odd jobs, including teaching and working as a translator from 1995 to 2000 and as an administrator from 2000 until he was laid off. He opined that appellant was status post injury to his left knee which was sustained at work approximately 12 years prior and that the knee had deteriorated since the last visit. Dr. Anand advised that appellant had previously been declared permanent and stationary, but at present had significant findings.

By letters dated January 26 and March 18, 2004, the Office requested additional information from appellant and Dr. Anand. No response was received.

By decision dated April 16, 2004, the Office denied appellant's recurrence of disability for January 27, 2002 through December 17, 2003 or the need for medical treatment on the grounds that the medical evidence of record failed to establish that his recurrence was causally related to his June 21, 1991 employment injury.

LEGAL PRECEDENT

A recurrence of disability means an inability to work after an employee has returned to work caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness.⁵ The definition of a recurrence of disability also includes a work stoppage caused by withdrawal of a light-duty assignment made specifically to accommodate the claimant's condition due to the work-related injury. However, this withdrawal must have occurred for reasons other than misconduct, nonperformance of job duties or a reduction-in-force.⁶

⁴ See *supra* note 1. The claim involving the closed 1985 injury is not before the Board on this appeal.

⁵ 20 C.F.R. § 10.5(x).

⁶ *Id*; see also *Terry R. Hedman*, 38 ECAB 222 (1986); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.3b(1)(c) (May 1997).

Where appellant claims a recurrence of disability due to an accepted employment-related injury, he has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.⁷ This burden includes the necessity of furnishing evidence from a qualified physician who concludes, on the basis of a complete and accurate factual and medical history, that the condition is causally related to the employment injury.⁸ The medical evidence must demonstrate that the claimed recurrence was caused, precipitated, accelerated or aggravated by the accepted injury.⁹ While a physician's opinion supporting causal relationship need not be one of absolute medical certainty, the opinion must not be speculative or equivocal. The opinion should be expressed in terms of a reasonable degree of medical certainty.¹⁰ Moreover, the physician must support his conclusion with sound medical reasoning.¹¹

ANALYSIS

Appellant alleged that he sustained a recurrence on November 10, 2001 almost nine years after leaving his federal employment and that he was disabled for work from January 27, 2002 to December 17, 2003. By letters dated January 26 and March 18, 2004, the Office advised him of the type of medical and factual evidence needed to establish his claim.

The Office received reports from Dr. Anand dated December 11, 2003. In his treatment note, Dr. Anand merely indicated that appellant's condition of left knee internal derangement had not improved. He did not provide a diagnosis relating this condition to the accepted June 21, 1991 employment injury. Dr. Anand did not state any other findings, rationale or opinion or indicate that appellant was disabled for any period of time. On December 11, 2003 Dr. Anand also indicated that appellant's left knee had deteriorated since the last visit.¹² He noted that, although appellant had been found permanent and stationary, he presently had significant findings. Dr. Anand did not identify what his clinical findings were. The reports of his are deficient in that they do not provide a full factual history of appellant's knee condition, his employment or an explanation of causal relationship to show how appellant's condition deteriorated over a course of 10 years. He did not discuss whether appellant's private sector employment contributed to the change in his condition or explain how the need for continuing treatment would be attributable to the June 21, 1991 employment injury. When an employee claims a recurrence of or continuing disability causally related to an accepted employment injury, he has the burden of establishing by the weight of the reliable, probative and substantial

⁷ 20 C.F.R. § 10.104(b) (1999); *Helen K. Holt*, 50 ECAB 279, 382 (1999); *Carmen Gould*, 50 ECAB 504 (1999); *Robert H. St. Onge*, 43 ECAB 1169 (1992).

⁸ See *Helen K. Holt*, *supra* note 7.

⁹ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.2 (June 1995).

¹⁰ *Norman E. Underwood*, 43 ECAB 719 (1992).

¹¹ See *Robert H. St. Onge*, *supra* note 6.

¹² It appears that Dr. Anand last saw appellant in November 1992.

medical evidence that the claimed period of disability is causally related to the accepted injury.¹³ The Office sought additional information from the physician but he did not respond to the March 18, 2004 letter.

The Board finds that appellant did not submit any medical evidence which contained a rationalized opinion from a physician who, on the basis of a complete and accurate factual and medical history, concluded that the claimed period of disability or need for medical treatment was causally related to the accepted injuries.¹⁴

The Board finds that the medical evidence of record is insufficient to establish that appellant sustained a recurrence of disability of his June 21, 1991 employment injury for the period January 27, 2002 through December 17, 2003.

CONCLUSION

The Board finds that appellant failed to meet his burden of proof to establish that he sustained a recurrence of disability commencing on January 27, 2002 through December 17, 2003 or that his need for medical treatment was causally related to his June 21, 1991 employment injury.

¹³ *Kenneth R. Love*, 50 ECAB 193 (1998); *Helen K. Holt*, 50 ECAB 279 (1999); *Carmen Gould*, 50 ECAB 504 (1999).

¹⁴ *See Helen K. Holt*, *supra* note 7.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 16, 2004 is affirmed.

Issued: December 20, 2004
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member